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No. 392

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE E. SHIMER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

ARCHIBALD COX,
Solicitor General,
WILLIAM H. ORRICK, JR.,
Assistant Attorney General,
WAYNE G. BARNETT,
Assistant to the Solicitor General,
ALAN S. ROSENTHAL,
ANTHONY L. MONDELLO,
Attorneys,
Department of Justice, Washington 25, D.C.

PINCKNEY G. McELWEE,
DAVID C. BYRD,
Attorneys, Veterans Administration,
Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	3
Summary of argument	7
Argument	11
I. The Veterans' Administration was liable to pay the full $4,000 guaranty to the Bank	13
A. Introduction: The question is whether state or federal law controls the amount to be credited to the indebtedness upon sale of the security for purposes of the guaranty, a question of basic importance to the operation of the loan-guaranty program	13
B. The Act and the regulations require the lender to account under the guaranty only for the actual proceeds of foreclosure unless the Administrator establishes an upset price	21
1. The Act	21
2. The regulations	24
a. The amount of the guaranty	25
b. The step in the accounting at which the proceeds of foreclosure are taken into account	31
c. Determination of the amount of the "credits" arising from sale of the security	35
C. The regulations are authorized by the Act and control over conflicting state law	42
II. Respondent is liable to indemnify the Veterans' Administration for its required payment of the guaranty	50

Page

Conclusion 59

Appendices:

A. Servicemen's Readjustment Act of 1944 61

B. Veterans' Administration Regulations 65

C. Pennsylvania Deficiency Judgment Act 75

CITATIONS

Cases:

Clearfield Trust Co. v. *United States*, 318 U.S. 363 50

McCulloch v. *Maryland*, 4 Wheat. 316 49

McKnight v. *United States*, 259 F. 2d 540 52

Sophia Wilkes Bldg. & Loan Ass'n. v. *Rudloff*, 348 Pa. 477 30

Testa v. *Katt*, 330 U.S. 386 49

United States v. *Allegheny County*, 322 U.S. 174 50

United States v. *Gallardo*, 154 F. Supp. 373 52

United States v. *Henderson*, 121 F. Supp. 343 52

United States v. *Jones*, 155 F. Supp. 52 52

Wissner v. *Wissner*, 338 U.S. 655 50

Statutes and regulations:

Act of December 28, 1945, 59 Stat. 623 ..... 2, 21, 61, 65, 66

Act of July 16, 1952, 66 Stat. 682 (38 U.S.C. (1952 ed.) 694(a)) 51

Act of August 1, 1956, 70 Stat. 914 (38 U.S.C. (1952 ed., Supp. V) 694g(b)) 51

Act of September 2, 1958, 72 Stat. 1203 (38 U.S.C. 1801–1824) 13, 21, 61

Act of July 14, 1960, 74 Stat. 531 13

Servicemen's Readjustment Act of 1944, Title III, 58 Stat. 291 (as amended, 38 U.S.C. (1952 ed.) 694–694n) 2, 3, 7, 13, 21, 44, 66

§ 500 ..... 3, 4, 21, 22, 23, 41, 46, 49, 51, 52, 61–63

§ 501 63

§ 504 ..... 24, 43, 44, 49, 63

§ 506 ..... 22, 23, 26, 29, 41, 42, 45, 46, 48, 50, 51, 64

Pennsylvania Deficiency Judgment Act (P.L. 400, July 16, 1941) (12 Pa. Stats. (Purdon) §§ 2621.1, *et seq.*) 3, 5, 6, 7, 8, 16, 29, 30, 35, 55, 57, 75–76

Veterans' Administration Regulations:

Under original Act (38 C.F.R. (1956 ed.)):

§ 36.4034 45

§ 36.4035 45

§ 36.4043 53

Statutes and regulations—Continued
Veterans' Administration Regulations—Continued
Under revised Act (38 C.F.R.):
Page
§ 36.4300 ..... 24, 37, 66
§ 36.4301(q) 25, 66
§ 36.4302 ..... 25, 41, 66
§ 36.4303 ..... 52, 67
§ 36.4313 31
§ 36.4316 ..... 26, 41, 43, 67
§ 36.4317 68
§ 36.4319 68
§ 36.4320 ..... 9, 11, 24, 29, 36, 37, 38, 40, 41, 42, 49, 68–72
§ 36.4321(a) 7, 27, 28, 29, 30, 33, 42, 54, 73
§ 36.4321(b) 8, 27, 30, 32, 33, 34, 39, 40, 42, 73
§ 36.4321(c) 27, 30, 32, 33, 34, 39, 40, 73
§ 36.4321(d) 32, 73
§ 36.4323 ..... 5, 11, 52, 53, 74
§ 36.4334 ..... 49, 74
Miscellaneous:
78th Cong., 2d Sess.:
S. 1767 44
H. Rep. 1418 45
H. Rep. 1624 (conference) 45
79th Cong., 1st Sess.:
H.R. 3749 46
H. Rep. 926 46
Hearings before Subcommittee of the Senate Committee on Finance on H.R. 3749 47
S. Rep. 698 48
H. Rep. 1449 (conference) 48, 49
Decisions of the Administrator of Veterans' Affairs:
No. 589, vol. 1, p. 1039 ..... 41, 45
No. 625, vol. 1, p. 1154 41
Restatement of the Law of Security 52
Stearns, *Law of Suretyship* (1951 ed.) 52
Veterans' Administration Manual M4A–8, Part IV 39

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OPINIONS BELOW

The opinion of the district court (R. 8–12) is unreported. The opinion of the court of appeals (R. 18–26) is reported at 276 F. 2d 792.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 1960 (R. 27). By order of Mr. Justice Brennan, dated June 30, 1960, the time within which to file a petition for a writ of certiorari was extended to and including August 22, 1960 (R. 28). By order of Mr. Justice Black, dated August 18, 1960, a further extension was granted to and including September 6, 1960 (R. 28). The petition for a writ of certiorari

was filed on September 6, 1960, and was granted on November 14, 1960 (R. 29; 364 U.S. 889). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a state deficiency-judgment statute releasing guarantors from liability to a lender to the extent of the judicially-determined "fair market value" of the property bid in by the lender at a foreclosure sale (or, if no timely petition to fix the value is filed, completely) relieves the United States of liability to the lender on its guaranty of home-financing loans made to eligible veterans under the Servicemen's Readjustment Act of 1944 (as amended, 38 U.S.C. (1952 ed.) 694–694n), notwithstanding that the regulations promulgated under the Act expressly require the lender to give credit, for purposes of the guaranty, only for the actual proceeds of a sale of the security unless the Veterans' Administrator has specified an upset price for which credit must be given.

2. Whether a veteran upon whose default on a guaranteed loan the United States became obligated, under the terms of the Act, to make payment of the guaranty to the lender is liable to indemnify the United States for the payment.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Title III of the Servicemen's Readjustment Act of 1944, 58 Stat. 291, as amended by the Act of December 28, 1945, 59 Stat. 626, are set forth in Appendix A (pp. 61–64, *infra*); of the Veterans' Administration regulations promulgated under that Act, in Appendix B (pp. 65–74,

infra); and of the Pennsylvania Deficiency Judgment Act (12 Pa. Stats. (Purdon) §§ 2621.1 *et seq.*), in Appendix C (pp. 75–76, *infra*).

STATEMENT

This is an action brought by the United States to recover indemnity from respondent for $4,000 the Veterans' Administration paid the lender upon respondent's default on a home-financing loan guaranteed under Title III of the Servicemen's Readjustment Act of 1944 (the "G.I. Bill") (Appendix A, pp. 61–64, *infra*). The facts were stipulated (R. 13–16).

1. On January 12, 1948, respondent obtained a loan of $13,000 from the Excelsior Saving Fund and Loan Association (the "Bank") for the purchase of a home in Whitemarsh, Pennsylvania. The loan, with 4% interest, was payable in monthly installments over a 20-year term and was secured by a first mortgage on the property purchased (R. 13). The purchase price of the property was $12,792 and was paid entirely out of the proceeds of the loan (see lines 3 and 12, R. 16).

On February 6, 1948, the Bank, pursuant to § 500(c) of the Act, forwarded to the Veterans' Administration a "Home Loan Report" (VA Form 4–1820) certifying that the loan met all the requirements of the Act and requesting issuance of a "Loan Guaranty Certificate" evidencing that the loan was guaranteed under § 500(a) of the Act. Respondent's certificate of eligibility for a guaranty was forwarded with the report (see R. 15) and, in a portion of the report required to be signed by him, respondent certified that he had not previously used any part of his

eligibility and requested that the full $4,000 guaranty benefit available to him be applied to the loan (R. 16). The form recited that (R. 15 (bottom)):

> Regulations issued under the act, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto. * * * .

The V.A. approved the report and the application for guaranty and, on February 11, 1948, issued a certificate guaranteeing, "Subject to the Servicemen's Readjustment Act * * * and the regulations issued thereunder to the date of this certificate, [30.76 [1]] percent of the indebtedness outstanding from time to time under the loan" (R. 13).

2. Respondent defaulted in making payments on May 12, 1948, and continued in default thereafter. A year later, on May 12, 1949, the Bank, having given the V.A. the required one-month notice of its intention to do so, entered judgment against respondent in the Court of Common Pleas of Montgomery County, Pennsylvania, to foreclose its mortgage on the property. A sheriff's sale was held on June 29,

[1] The 37.38% figure appearing in the stipulated facts is erroneous. The percentage is fixed by the statute (see § 500 (a) and (b)) as the ratio of the maximum amount of the guaranty, $4,000, to the original amount of the loan, $13,000, which is in fact 30.76%. Although it does not appear of record, the correct figure (30.76%) was used throughout in the subsequent computations and accountings.

1949, and the Bank purchased the property on a bid of $250 (R. 14).

On July 8, 1949, the Bank filed a claim with the V.A. for payment of the full guaranty of $4,000 (the indebtedness having exceeded $13,000 at the date of the judgment of foreclosure (see note 16, pp. 30–31, *infra*)). The V.A. paid the claim on October 7, 1949 (R. 14).

At no time did the Bank file a petition under the Pennsylvania Deficiency Judgment Act (12 Pa. Stats. (Purdon) §§ 2621.1 *et seq.*) to have the "fair market value" of the property determined. The Bank resold the property on September 8, 1949, for $10,500 (R. 14).

3. On January 10, 1958, the United States brought this action to recover indemnity from respondent for the $4,000 paid the Bank under the guaranty,[2] the action being based on a provision of the Veterans' Administration regulations, in force at the time of the loan, providing:

> § 36.4323 *Subrogation and indemnity.* * * *
> (e) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of the act shall constitute a debt owing to the United States by such veteran.

In denying the government's motion for judgment on the pleadings, the district court filed an opinion (R. 8–12) holding that, under the Pennsylvania De-

[2] Second Count of the complaint (R. 4–5). The First Count alternatively sought recovery by way of subrogation to the Bank's rights on the note (see R. 5 (prayer)). Denial of recovery on that count was not challenged in the court of appeals and we do not challenge it here.

ficiency Judgment Act, the V.A., as guarantor, was released from liability to the Bank upon the Bank's purchase of the property at the sheriff's sale, followed by its failure to file a petition within six months to have the "fair market value" of the property determined and credited against the indebtedness. The V.A. not having been liable to make the payment to the Bank, it followed, the court held, that it was not entitled to indemnity from respondent. Upon a motion for summary judgment (R. 12) and a stipulation of facts (R. 13–16) being filed, the court, on the basis of its opinion on the pleadings, granted judgment for respondent (R. 17).

4. The court of appeals affirmed (R. 18–26). Although agreeing "with the government that an independent indemnity relationship was created by the veteran's application for guaranty of his loan * * * [and] that the terms of that guaranty are governed by the Servicemen's Readjustment Act * * * and the regulations promulgated" under it (R. 20), it held that under the Act and the regulations the amount payable under the guaranty was limited to the "deficiency", and that (R. 21):

> An examination of the Act fails to disclose any attempt on the part of Congress to supplant state law for determining the amount of the deficiency on the loan between the mortgagor and the mortgagee, which deficiency, up to the statutory limit, is the amount and the only amount which may be paid by the V.A. under the guaranty. The regulations promulgated under the Act make it equally clear, as we later demonstrate, that state law was in-

> tended to be followed in determining the amount of the indebtedness to which the guaranty related.

Since "federal law requires a referral to the state law in this instance" (R. 22), the court held that the Pennsylvania Deficiency Judgment Act controlled what "credits" were to be made to the indebtedness for purposes of determining the amount payable on the guaranty under the regulations (R. 22–23). The effect of the Pennsylvania Act being to require the Bank to give a "credit" for the property equal to its value (which, unless a judicial appraisal is obtained, is deemed equal to the indebtedness), it came "squarely * * * within the regulation" (§ 36.4321(a)) the court had construed as requiring such "credits" (R. 24). It concluded accordingly that, upon the Bank's failure to have the value fixed at less than the debt, "its claim against the veteran was fully satisfied by the security and the guarantor (V.A.) was released" (R. 26). The veteran's indemnity liability being, in turn, "limited to the amount which the V.A. under the statute is *required* to pay" (R. 21), it followed that respondent was not liable.

SUMMARY OF ARGUMENT

Upon respondent's default on a $13,000 home-financing loan, $4,000 (*i.e.*, 30.76%) of which was guaranteed by the Veterans' Administration under the Servicemen's Readjustment Act of 1944, the V.A. paid the lending Bank the $4,000 guaranty. The court of appeals denied recovery of indemnity for that payment from respondent on the ground that the V.A. was not liable to pay the guaranty to the Bank. We will show

that (1) the V.A. was liable to the Bank and (2) respondent is therefore liable to indemnify the V.A.

I.

We have no basic disagreement with the court of appeals' holding that the net amount the V.A. was required to pay the Bank out of the guaranty was limited to the Bank's "loss" measured by the indebtedness less a credit for the proceeds of the sale of the security. While the principal amount of the guaranty becomes fixed as a percentage of the indebtedness before crediting the proceeds of foreclosure, the V.A.'s rights of subrogation upon payment of the guaranty necessarily require that the proceeds of foreclosure be taken into account in the final accounting between the V.A. and the lender. The regulations provide, accordingly, that, where, as here, the lender's claim for the guaranty is not submitted until after sale of the security, the amount payable to the lender "shall in no event exceed the remaining balance of the indebtedness" after all "Credits accruing from the proceeds of [the] sale * * * of the security" (§ 36.4321(b)).

The disagreement arises over how those "credits" are to be determined. The court of appeals held that the Act and regulations did not provide for those credits and intended them to be governed by state law. It then held that, under the Pennsylvania Deficiency Judgment Act, the Bank, having itself bought in the property at the sheriff's sale, was required to give credit for the full amount of the debt unless it obtained a judicial appraisal of the "fair

market value" of the property (in which event it would have to give credit for that value).

We need not examine the court of appeals' interpretation of state law, for its basic error was that it overlooked a section of the regulations which *does* provide, expressly and in great detail, for the "amount which shall be credited to the indebtedness of the borrower on account of the value of the security" for purposes of the final accounting on the guaranty. That section (§ 36.4320) provides in substance that, unless the V.A. establishes an "upset price"—a minimum amount for which the lender is required to give credit and at which he has an option to resell the property to the V.A.—the lender need credit only the actual proceeds of the sale (§ 36.4320(a)(4)). Since no upset price was established in this case, the Bank was required to give credit only for the actual proceeds which, being less than the unguaranteed portion of the debt (something over $9,000), left a "remaining balance of the indebtedness" greater than the $4,000 guaranty, and entitled the Bank to payment of the full guaranty.

The foreclosure-credit provisions of § 36.4320 are the heart of the protection afforded lenders by the guaranty. Since the lender is required to give credit (on settlement) for more than the actual proceeds only when he is given an option to resell the property to the V.A. at the specified amount, he is assured of being paid the full guaranty unless he is otherwise made whole in cash. The consequence is that the guaranty affords the lender protection fully equivalent to that normally provided by a down payment,

for with either a 30% down payment or a 30% guaranty the security stands for only 70% of its original cost and the lender has a 30% "cushion" to protect himself against depreciation and expenses of foreclosure. And it is only by affording that degree of protection that the guaranty can serve its intended purpose of inducing lenders to extend 100% financing to veterans unable to make the customarily-required down payment.

Without those provisions, and with resort being made to state law to determine the "credits" to be made for disposition of the security, the guaranty would be virtually worthless. Under the decision below, the lender who, in reliance on the guaranty, does not require a down payment and makes a 100% loan turns out to have no "cushion" at all. The loan being for 100% of the cost of the property, the security itself affords no margin of safety, and he can reach the guaranty only by (1) litigating the "value" of the property and (2) accepting the property in payment of the loan at a judicially-determined "value" that there is no assurance of his being able to realize. It is evident, we think, that few financing institutions would be willing to accept a guaranty as remote and contingent as that in lieu of a down payment and, hence, that the effect of the decision below would be to discourage V.A.-guaranteed financing (*i.e.*, without down payments) in states with deficiency-judgment statutes like Pennsylvania's.

The court of appeals turned to state law only because it overlooked, or failed to appreciate the significance of, the provisions of the regulations pre-

scribing the credits to be made on sale of the security (§ 36.4320). Once the direct conflict between those provisions and Pennsylvania law is recognized, there can be no doubt, we think, that the regulations—expressly authorized by the Act and essential to the functioning of the federal program—are controlling.

II

The court of appeals, denying recovery over against respondent only because of its holding that the V.A. was not liable to the Bank, agreed that respondent would be liable for indemnity if the V.A. was liable to the Bank. That view seems clearly correct, for the right of indemnity—a right of a guarantor universally recognized at common law—is necessarily implicit in the Act creating the guaranty and is expressly provided for in the regulations (§ 36.4323(e)), which, in turn, were incorporated by reference into respondent's application for the guaranty. Nor does that result place the veteran, as has been asserted, in a worse position than a nonveteran, for if respondent is now required to reimburse the V.A. for the $4,000 guaranty paid the Bank he will have lost no more than a nonveteran borrower who would have been required to pay an equivalent amount as a down payment, which he equally would have lost on foreclosure. The only difference is that, because the credit of the United States stood behind him, respondent has been able to defer the making of his "down payment."

ARGUMENT

On respondent's application, the Veterans' Administration guaranteed $4,000 (*i.e.*, 30.76%) of a

$13,000 loan made by the Bank to respondent for the purchase of a home, the amount of the guaranty to be proportionately reduced as the principal of the outstanding indebtedness was reduced. Shortly thereafter, respondent defaulted, and in due course the Bank obtained a judgment of foreclosure on the mortgaged property, later bidding the property in at the sheriff's sale for $250. The indebtedness having exceeded $13,000 on the date of foreclosure, and the proceeds of sale of the security not having exceeded $9,000, the V.A. on demand paid the Bank the full $4,000 guaranty. The V.A. then brought this action against respondent to obtain reimbursement (by way of a right of idemnity under the guaranty contract) for that payment.[3] The court of appeals held that the V.A. had no obligation to pay the guaranty to the Bank and hence has no right of indemnity against respondent.

We agree with the court of appeals that respondent's duty to indemnify the V.A. depends entirely upon the V.A.'s duty to pay the guaranty to the Bank. Thus, although the ultimate question is one of recovery from respondent, the controlling question is that of the V.A.'s liability to the Bank. We shall, therefore, first show that the V.A. was obligated to pay the Bank the full $4,000 guaranty (Point I) and then show that respondent is liable to indemnify the V.A. (Point II).

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[3] See note 2, *supra*. We refer to the Veterans' Administration as the guarantor-plaintiff in this brief only for convenience. Technically, the "United States" is both the guarantor and the party to this action.

I.

THE VETERANS' ADMINISTRATION WAS LIABLE TO PAY THE FULL $4,000 GUARANTY TO THE BANK

A. Introduction: The Question Is Whether State or Federal Law Controls the Amount To Be Credited to the Indebtedness Upon Sale of the Security for Purposes of the Guaranty, a Question of Basic Importance to the Operation of the Loan-Guaranty Program

The question of crucial importance in this case is that of the V.A.'s liability to the Bank, for upon removing the doubt as to that liability depends the continued functioning of the veteran loan-guaranty program. The object of the Servicemen's Readjustment Act of 1944 in providing the guaranty was to induce lenders to extend up to 100% home financing to veterans without the means to make the customary down payment. To that end, as the legislative history (see pp. 44–49, *infra*) makes clear, the guaranty was devised to provide lenders with protection against loss on default fully equivalent to that normally afforded by a down payment. The decision below, as we will show, makes that intended protection to lenders almost entirely illusory and thus destroys the utility of the guaranty in inducing lending institutions to make home-financing loans to veterans (of whom there are about 14 million still eligible for loan benefits[4]) unable to make down payments. It

[4] About 10 million are World War II veterans, who have until July 25, 1962 to use their eligibility; about 4 million are Korean conflict veterans, who have until February 1, 1965. See 38 U.S.C. (1958 ed.) 1803, as extended by Act of July 14, 1960, 74 Stat. 531. Both limits may, of course be further extended.

is that consequence of the decision that makes the question here so important.

1. The decision below is not so much the product of differences over basic legal principles as it is of misunderstanding—not without cause, for the regulations are complex and cumbersome—as to the operation of the guaranty. We do not believe that the court of appeals doubted either (1) that the V.A. regulations implementing the statute (and incorporated into the contract) were fully authorized, or (2) that, if state law should conflict with a provision of the regulations, the regulations would be controlling under the Supremacy Clause. Rather, the court turned to state law to resolve the crucial question (the "credits" to be made against the indebtedness, for purposes of the guaranty, upon the sale of the security) because it believed the regulations did not purport to govern that question. It was in that respect that the court erred, for, as we will show, the regulations do expressly govern the question, and those provisions are, indeed, the essence of the protection afforded by the guaranty.

Our primary purpose in this brief will, therefore, be to clarify the operation of the guaranty under the Act and the regulations and show the impact of the decision below upon the structure thus established. Before turning to a detailed examination of the Act and the regulations, however, we will, in order to clarify the basic issue, state in general terms the extent of our agreement and disagreement with the court of appeals and the point at which we

contend the court overlooked controlling provisions of the regulations. And to show the significance of that error, we will contrast, again in general terms, the operation of the guaranty under the decision below and under the regulations as we construe them.

2. While there is some ambiguity in the court's opinion even on those matters, there is no basic disagreement, we believe, on the following points:

(a) The amount of the guaranty, although originally variable with the indebtedness, becomes fixed as a percentage of the indebtedness *before* crediting against the indebtedness the proceeds of foreclosure, and was in this case $4,000. The percentage feature only reduces the amount of the guaranty as the debt is repaid in the ordinary course. The "loss" upon default is borne in full by the V.A. up to the amount of the guaranty so fixed and is not shared pro rata on the basis of that percentage.

(b) The net amount the lender is entitled to receive (or keep) out of the guaranty is limited to its "loss" measured by the indebtedness remaining after a credit for the proceeds of foreclosure. Whether the full guaranty is paid to the lender immediately upon default and the lender thereafter accounts to the V.A. as subrogee for the proceeds of the foreclosure, or whether the claim for the guaranty is not submitted until after foreclosure and the proceeds are taken into account as limiting the amount payable on the claim, the result is the same. Either way, the net payment to the lender, after final accounting, is limited to what the court of appeals calls the "deficiency"—namely,

> the indebtedness to the lender remaining after a credit for the proceeds of foreclosure.

That is, while we have some disagreement with the way in which the court of appeals stated those propositions, and its mis-citation in doing so of a provision of the regulations, that disagreement is mainly formal and does not go to the heart of the matter.

The point at which the basic difference arises is over how the "credit" for the proceeds of foreclosure is to be determined. We agree with the court that some credit must be made (in determining the *net* amount payable to or retainable by the lender out of the guaranty) for the lender's realization upon the security; the dispute is solely over how that credit is to be determined. As we understand the court of appeals' opinion, it found nothing in the Act or the regulations directly governing that matter and hence concluded that it was necessary to resort to state law to determine the proper credit. Under the Pennsylvania Deficiency Judgment Act, it held, in turn, that a mortgagee who acquires the property at the foreclosure sale must, in effect, credit against the indebtedness, on account of his acquisition of the property, the full balance of the indebtedness due from the borrower, unless, within six months, he petitions the proper court to have a lesser fair market value of the property judicially determined, in which case he must give credit for the fair market value so determined.

We do not here take issue with the court's interpretation of the state law. Its error rather lay in thinking that resort to state law was necessary, for it overlooked the provisions of the V.A. regulations expressly pro-

viding for the amount that "shall be credited to the indebtedness of the borrower on account of" the disposition of the security, for purposes of determining the loss ultimately payable under the guaranty (see pp. 35–42, *infra*). In brief, the regulations provide that, before the sale, the V.A. may specify what amounts to an "upset price" at which the lender may buy in the property and resell it, at its option, to the V.A. If an upset price is so established, the lender must credit against the indebtedness either that amount or the actual proceeds of sale, whichever is greater. If an upset price is not established, then the lender need credit against the indebtedness only the actual proceeds of sale.

The net effect of the regulations is that the lender is required to give credit, before becoming entitled to receive or keep the guaranty, only for the actual cash proceeds of the sale or for the immediately *realizable* value of the property. Thus, the lender is always entitled to the full guaranty unless the lender has otherwise been made whole in cash or cash equivalents (*i.e.*, an option to sell the property at the price for which the lender is required to give credit). Protection against the lender's getting a windfall at the expense of the V.A. is provided by the upset-price mechanism. If the V.A. believes that the realizable value of the property is greater than the unguaranteed portion of the debt, so that the lender's true "loss" is less than the full guaranty, it establishes an upset price for the property greater than the unguaranteed portion of the debt and thus reduces the net amount it must pay under the guaranty. If the V.A. thinks the realizable value of

the property is no greater than the unguaranteed portion of the debt, so that on its valuation the lender's loss will in any event exceed the guaranty, it does not establish an upset price and, if the actual proceeds of sale are less than the unguaranteed portion of the debt, pays the lender the full amount of the guaranty.

3. The impact of the decision below on the guaranty program becomes evident from a contrast of the protection afforded by the guaranty under the regulations (as summarized above and examined in detail *infra*) and under the decision below applying Pennsylvania law to determine the "credits" to be made to the indebtedness for purposes of the guaranty.

Under the regulations, the guaranty is a full substitute for a down payment and affords equivalent protection. With a 30% down payment, the lender advances only 70% of the cost of the house and thus, even if under Pennsylvania law it must accept the house in full payment of the indebtedness, the house stands for only 70% of its original value. Thus, the lender has a 30% "cushion" and suffers a loss only if the realizable value of the house is less than 70% of its original value.[5] The result is the same with a 30% guaranty under the regulations. The worst that can happen to the lender is that it will be paid the 30% guaranty in full and have to accept the house in payment of the remaining 70% of the debt (it cannot be paid less than the full guaranty unless it actually

[5] We are assuming, of course, cases in which the default occurs before the principal of the debt has been significantly reduced. To the extent that the debt is paid off faster than the property depreciates—presumably the usual case—the margin of protection would increase.

realizes or is given an option to realize more than 70% of the debt from the house, in which case it is made whole). In short, under either a 30% down payment or a 30% guaranty, the lender suffers a loss only to the extent that the house has a realizable value, on foreclosure, of less than 70% of its original value.

Under the decision below, on the other hand, the guaranty provides much less protection. Before becoming entitled to the guaranty, the lender must first obtain a judicial appraisal of the "fair market value" of the property and credit that valuation against the indebtedness. If no appraisal is obtained, the house is deemed to have been accepted in full payment of the debt and the debt is discharged, so that the lender receives nothing under the guaranty. And if an appraisal is obtained, the lender is entitled to the guaranty only to the extent that the appraised "fair market value" is less than the indebtedness. At best, therefore, the lender must first accept the house in payment of the debt at its judicially-determined fair market value before it can reach the guaranty at all. That result destroys the value of the guaranty in two ways: first, because there is no assurance that the judicially-determined "fair market value" will be realizable (it is not, like the V.A.'s upset-price valuation, backed up by an offer to buy); and, second, the guaranty can in no event be reached without the time-consuming and expensive procedure of litigating the "fair market value."

The practical operation of statutes like Pennsylvania's is to discourage financial institutions from lending more on a house than the amount for which they are

willing to accept the house in full payment on default; they rely upon the down-payment "cushion," and not on judicial appraisals of the property, to make them whole. Under the guaranty as applied below, however, the lender, having made a 100% loan (*i.e.*, there being no down payment), has no "cushion" and can be made whole only by, first, litigating the "fair market value" of the house and, second, being successful in actually reselling the property at that "value." It is evident, we think, that few, if any, financing institutions would accept a guaranty so remote and contingent in the place of a cash down payment. Thus, the practical effect of the decision below would be to discourage V.A.-guaranteed financing in Pennsylvania and states with similar statutes.* For that reason, the provisions of the regulations requiring only the actual cash proceeds or an upset-price (*i.e.*, immediately realizable) valuation to be credited against the indebtedness, before the guaranty is reached, are not only important but are, indeed, the very essence of the protection afforded the lender by the guaranty. With those provisions, the guaranty is fully equivalent to a down payment; without them it is (at least in Pennsylvania and states with similar laws) almost worthless for practical purposes.

With that preliminary explanation of the question in this case and of its importance, we will turn to a detailed examination of the statute and the complex

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* That is, of 100% loans. Presumably lenders who otherwise obtain an adequate down payment to protect themselves against the operation of such statutes would have no objection to *also* having a V.A. guaranty.

regulations. We will then show (although we do not think that the matter is really in doubt or was meant to be denied by the court of appeals) that the regulations are authorized by the statute and are governing notwithstanding conflicting state laws.

B. The Act and the Regulations Require the Lender To Account Under the Guaranty Only for the Actual Proceeds of Foreclosure Unless the Administrator Establishes an Upset Price

1. THE ACT

The veterans' loan-guaranty program was first established by Title III of the Servicemen's Readjustment Act of 1944, §§ 500, *et seq.*, 58 Stat. 291. That Title was, however, extensively revised by the Act of December 28, 1945, 59 Stat. 626, and it is to the Act as so revised (the relevant parts of which are set forth in Appendix A, pp. 61–64, *infra*) that we will refer in this brief.[7]

The provisions of the Act itself are relatively sparse. Home-financing (and certain other) loans to eligible veterans made by specified classes of lenders (§ 500(d)) in compliance with various requirements[8] were to be "automatically guaranteed by the

[7] Unless otherwise indicated, all references to §§ 500–506 are to the Act as so revised and as in force on the date of the loan in this case (January 12, 1948). With subsequent but relatively minor amendments, the Act may be found at 38 U.S.C. (1952 ed.) 694–694n. The Act was substantially rewritten (though with little change of substance) by the Act of September 2, 1958, 72 Stat. 1203, which codified it as 38 U.S.C. 1801–1824, and it is in that form that it appears in the 1958 edition of the Code.

[8] *E.g.*, maturity and interest rate (§ 500(b)) and limitation of the purchase price to a valuation made by V.A.-designated appraisers (§ 501(3)).

Government * * * in an amount not exceeding fifty per centum of the loan * * * [or] $4,000" (§§ 500(a), 501).[9] Subject to those maximum limitations, "the liability under the guaranty * * * shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation" (§ 500(b)). Section 506, prescribing the procedure on default, provides:

> In the event of default in the payment of any loan guaranteed under this title, the holder of the obligation shall notify the Administrator who shall thereupon pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed, and shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty: *Provided* * * * *further,* That (1) nothing herein shall be construed to preclude any forbearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Administrator; and (2) the Administrator may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

Those provisions establish the basic nature of the guaranty. By virtue of the pro rata reduction provision (§ 500(b)), the guaranty is originally a variable amount determinable as a percentage of the in-

[9] The "automatic" device, adopted in the 1945 revision, made it possible for lenders to complete the loan before obtaining V.A. approval. After making the loan, however, they were required "forthwith" to report it to the V.A., whereupon, if the loan met the requirements of the Act, a loan guaranty "certificate" would be issued (§ 500(c)).

debtedness outstanding from time to time (the percentage, unless the 50% limit was lower and controlling, being established by the ratio of $4,000 to the original loan (§ 500(a)). However, since the guaranty becomes payable upon default (§ 506), its amount becomes fixed as a percentage of the indebtedness outstanding on that date unless the Administrator—as he is authorized to do by the last proviso of § 506—allows interest and other charges to continue to accrue on the indebtedness, for purposes of computing the guaranty, past the date of default. Since, however, the Administrator is not authorized to postpone the date of computation beyond the date of "judgment and decree" of foreclosure or sale, the proceeds of disposition of the security do not affect the principal amount of the guaranty. That is true because the date of "judgment and decree" of foreclosure or sale always precedes the actual sale, so that the guaranty necessarily becomes fixed before the proceeds of the security are realized and credited against the indebtedness.[10]

But while the principal amount of the guaranty becomes fixed before crediting to the indebtedness the proceeds of foreclosure, it is equally clear that the lender must account to the V.A. for any such proceeds, for the V.A. is expressly subrogated to the bank's rights to the extent of the guaranty (§ 506). That is, the lender is entitled to no more than to be made whole, and if the guaranty and the

[10] For the legislative history showing that Congress plainly intended such an absolute guaranty to the lender, see *infra*, pp. 44–49.

proceeds of foreclosure exceed the indebtedness, the lender must, if the guaranty has already been paid, pay over the excess to the V.A. as subrogee. Similarly, if the proceeds are realized before the guaranty is paid, the excess over the unguaranteed portion of the debt must be set off against the guaranty and the lender would actually be paid, out of the guaranty, only the amount of its net "loss."

2. THE REGULATIONS

The statute omits the complex details of implementing the guaranty program and, instead, expressly delegates to the Administrator authority "to promulgate such rules and regulations not inconsistent with this title * * * as are necessary and appropriate for carrying out" its provisions (§ 504(a)). Thus, while the basic nature of the guaranty is established by the statute itself, the accounting and other details are left to the regulations. The relevant provisions of the regulations as in force on the critical dates,[11] together with their history and the source of each provision, are set forth in Appendix B (pp. 65–74, *infra*), and will be cited here only by section number (§§ 36.4300 *et seq.*).

The regulations being complex and their interrelationships intricate, our exposition of them will perforce be detailed. We will examine them in three steps, considering separately: (a) the determination of the principal amount of the guaranty; (b) the

[11] With one exception (§ 36.4320, see note 19, pp. 36–37, *infra*), the regulations are set forth as they stood on the date of the loan (January 12, 1958).

way in which the proceeds of foreclosure are taken into account; and (c) the amount of the credits to be made against the indebtedness on account of foreclosure.

a. *The amount of the guaranty.*—Like the statute, the regulations view the guaranty as a liability that (subject to authorized postponements) becomes fixed in amount and absolutely payable immediately upon default, with the proceeds of the foreclosure to be taken into account only in a final "accounting" to the V.A. on its resulting rights of subrogation.

The guaranty is originally fixed, as the Act prescribes, as 50% of the original principal amount of the loan, or $4,000, whichever is less (§ 36.4302(a), (b)). Being "reduced or increased pro rata with any reduction or increase in the amount of the guaranteed indebtedness," however, it amounts to a guaranty of "the percentage of the indebtedness corresponding to that of the original guaranty," but not to exceed the original guaranty (§ 36.4302(f)). Thus, the amount of the guaranty in this case was 30.76% (the ratio of $4,000 to $13,000) of the outstanding indebtedness but not to exceed $4,000.

While remaining variable before default, the amount of the guaranty becomes fixed under the regulations (but for postponements later provided for, see *infra*) upon default. "Guaranty", as used in the regulations, is expressly defined to mean "the obligation of the United States, assumed by virtue of Title III of the act, to repay a specified percentage of a loan upon the default of the primary debtor" (§ 36.4301(q)). Thus, the regulations start with the

statutory premise that, except as later adjustments are specifically authorized by the regulations, the guaranty liability becomes fixed in amount and absolute upon the date of default.

The lender is not, however, required to claim the guaranty immediately upon default, but "may at his option, then or thereafter, submit a claim for payment of the guaranty" (§ 36.4316(a)).[12] In practice, in order to avoid the necessity for more than a single accounting (*i.e.*, an initial payment of the guaranty followed by a later accounting for the proceeds of foreclosure), lenders are encouraged to postpone their claims until after foreclosure proceedings are completed and a single, final accounting can be made; in fact, claims are rarely submitted before foreclosure and sale of the security. Because of the practice of postponing the claims, however, it was necessary to allow—as the Administrator was authorized to do under the last proviso of § 506 of the Act—adjustments to be made, in the computation of the amount of the guaranty, for interest or other charges increasing the amount of the indebtedness subsequent to the date of default, while at the same time providing a cut-off date, before realization on the security, at which the amount of the guaranty would become fixed.

[12] Recognizing that most defaults are cured within a relatively short time, the regulations actually permit a claim for the guaranty to be made only after the default has continued for three months (§ 36.4316(a)). The practical effect of that, however, is simply that a "default" is not considered to be operative for purposes of the guaranty until it has continued for three months, and for simplicity we will ignore the three-months requirement in the following discussion and use "default" as meaning a three-month default.

It is that purpose which is served by § 36.4321(a) of the regulations, which provides:

> (a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure, or (2) in non-judicial foreclosures the date of publication of the first notice of sale, or (3) in cases in which the security is repossessed without a judgment, decree or foreclosure the date the holder repossesses the security, or (4) if no security is available or no repossession takes place, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

That provision, it should be emphasized, relates only to the computation of the principal amount of the guaranty and not to the final accounting to be made after the realization of the proceeds of foreclosure, a matter which, as we will show below, is governed by the following subsections of that section (*i.e.*, § 36.4321 (b) and (c)).[13] Its effect is simply

[13] The use of the language, "the amount payable on a claim for the guaranty shall be," reflects only the basic concept that the lender is absolutely entitled to payment of the

to postpone the date of computation of the amount of the guaranty beyond the date of default to the "cut-off" dates there enumerated (unless the claim is actually filed earlier), so that debits and credits accruing from the date of default up to the cut-off date (primarily interest) may be taken into account in finally fixing the amount of the guaranty (*i.e.*, by increasing or decreasing the indebtedness as a percentage of which the guaranty is fixed). After the cut-off date, in turn, the amount of the guaranty is no longer variable; debits and credits arising after that date, although taken account of in the final accounting discussed under the next heading, do *not* affect the principal amount of the guaranty.

The important aspect of the designated cut-off dates for present purposes is that they are all dates that *precede* the actual sale or other disposition of the security, with the result that the amount of the guaranty is always fixed before, and is not affected by, any credits made to the indebtedness for the proceeds of foreclosure. That is apparent in the case of the date of "judgment or of decree of foreclosure," for the "judgment" of foreclosure invariably precedes the actual sale of the security. Although less obvious, it is also true of the cut-off dates applicable to other kinds of loans, as may be seen by comparing those dates with the events by which the credits arising

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full guaranty at any time after default and that the proceeds of foreclosure do not in theory reduce the amount payable on the guaranty as such but are rather to be accounted for independently on a theory of subrogation. That is, "the amount payable on a claim for the guaranty," as used in § 36.4321(a), *is* the guaranty itself.

from disposition of the security are to be determined (see § 36.4320). That effect of the cut-off dates is essential to the function of the guaranty in absorbing the *full* loss on the loan (up to the amount of the guaranty) rather than simply a *pro rata* share of the loss. For if the proceeds of foreclosure were to be first credited to the indebtedness and the guaranty then determined as a percentage of the remaining indebtedness, the so-called "guaranty" would amount to no more than an agreement to indemnify the bank for the stated percentage of the *loss* itself.[14]

The operation of § 36.4321(a) in this case seems clear beyond dispute. The *judgment* of foreclosure was entered on May 12, 1949, and the sheriff's *sale* was not conducted until June 29, 1949 (R. 14). Thus, it is as of *May 12,* that the regulation expressly requires the computation of the guaranty to be made, and as of that date, since the property had not yet been sold, there were no conceivable credits arising from the disposition of the security either under the regulations *or* under state law.[15] Hence, the court of

[14] It is equally apparent that, if there were not a pre-foreclosure sale cut-off date for the computation of the guaranty, no lender would wait until after foreclosure to submit his claim; he would rather exercise the absolute right given to him by the statute (§ 506) to demand payment of the guaranty—fixed as a percentage of the indebtedness *then* outstanding—immediately upon default, thereafter accounting for the proceeds of foreclosure only by way of subrogation and not in reduction of the amount of the guaranty.

[15] The court of appeals is in error in its statement that the credit required to be given under the Pennsylvania Deficiency Judgment Act arises at "the date of judgment or of decree of foreclosure" (R. 23). By its express terms, that Act becomes applicable only "Whenever any real property has heretofore

appeals' reliance (R. 22–23) on § 36.4321(a) as requiring a credit for the proceeds of foreclosure, for whatever purpose, was misplaced. That error, however, seems to have been of little consequence, for it was counterbalanced by the court's further error in reading § 36.4321(a) as relating, not to the computation of the principal amount of the guaranty, but to the credits to be made on final accounting. The net effect was that the court read § 36.4321(a) as requiring a credit for the proceeds of foreclosure to be made in the final accounting, so that the net amount actually paid to the lender would not exceed its "loss." While that is a misreading of § 36.4321(a), it is (as we will show) essentially the effect of the following subsections ((b) and (c)), so that the total product of the errors amounts simply to a citation of the wrong subsection.

In summary, the regulations make clear that the amount of the guaranty became fixed, in this case, as of May 12, 1949. Since the indebtedness outstanding on that date, after all debits and credits accruing up to that date, exceeded $13,000,[16] the

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been or is hereafter sold, directly or indirectly, to the plaintiff in execution proceedings and the price for which such property has been sold was or is not sufficient to satisfy the amount of the judgment * * *" (§ 1, p. 75, *infra*). See also *Sophia Wilkes Bldg. & Loan Ass'n.* v. *Rudloff*, 348 Pa. 477, quoted in the opinion below (R. 23, n. 5). Here, of course, it was not until the "execution proceedings" on June 29, 1949 (*i.e.*, the sheriff's sale, R. 14), that the property was "sold" to the Bank at a "price" less than the "judgment" entered on May 12, 1949

[16] The stipulation of facts (R. 13–16), although sufficient for the purpose for which it was made (respondent's motion for summary judgment on the basis of the district court's opinion on the pleadings, see R. 12), does not disclose the

amount of the guaranty, so fixed, was the maximum of $4,000.

b. *The step in the accounting at which the proceeds of foreclosure are taken into account.*—That the proceeds of foreclosure do not affect the amount of the guaranty as such does not mean, as we have emphasized, that they are not to be taken into account at all. Nor do we have any basic disagreement with the court of appeals that the *net* pay-

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amount of the indebtedness outstanding on the date of the judgment. Nor should the stipulation that respondent "continued in default" after defaulting on May 12, 1948 (R. 14), be read as implying that the three monthly payments falling due before then were the only payments made by respondent. It appears from the V.A.'s files that respondent in fact made six additional payments after the initial default—reducing the balance of the unpaid principal and accrued interest on May 12, 1949, to slightly under $13,000—and that the total indebtedness exceeded $13,000 only after adding the various other charges which are allowable in the computation of the guaranty (real estate taxes paid by the Bank, attorney's fees, and costs of foreclosure, see § 36.4313, 12 F.R. 8343 (December 12, 1947)). Since none of the relevant items are shown by the present record, the exact amount of the indebtedness on May 12, 1949 cannot be determined here and must be left to further findings by the district court (or a further stipulation) on remand. That is, while we have assumed in this brief (and believe it to be a fact) that the indebtedness on May 12, 1949, exceeded $13,000, we acknowledge that that fact has not yet been established in this action and that it is still open to respondent to challenge it on remand.

The damages assessed by the state court on the judgment of foreclosure ($14,103.47, see note 37, pp. 56–57, *infra*) are not, we may note, controlling for purposes of the guaranty, for they included a 10% attorney's fee which, although assessable against respondent under the terms of the bond and mortgage, is greater than that allowable in the computation of the guaranty under the regulations (see § 36.4313, *supra*).

ment that the lender is entitled to receive (or keep, if the guaranty has already been paid) out of the guaranty is limited to its "loss" measured by the indebtedness less a proper credit for the proceeds of foreclosure—*i.e.*, what the court of appeals called, perhaps somewhat misleadingly, the "deficiency."

The accounting for the proceeds of foreclosure is governed by § 36.4321 (b) and (c) of the regulations, which provide:

> (b) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of the claim, shall be reported to the Administrator incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.
>
> (c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. He shall forthwith pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.[17]

[17] The final subsection, (d), provides for essentially the same kind of accounting, but relates to *debits* (rather than, as do (b) and (c), *credits*) arising after the "date of computation" (*i.e.*, the date the guaranty becomes fixed). Though not directly involved here, we set it out to complete the structure:

> (d) Any allowable expenditures or costs paid subsequent to the date of computation of the claim and

The two subsections serve the same purpose, but relate to different factual situations: (b) applies when the claim for the guaranty is not submitted until after disposition of the security, while (c) applies if the claim for the guaranty was submitted prior to foreclosure (*i.e.*, so that a separate accounting is required to account for the proceeds of foreclosure).

In this case, as we have noted above, the "date of computation" (defined by subsection (a), *supra*), was the date of judgment of foreclosure (May 12, 1949), and the guaranty computed as of that date was $4,000. The sale of the security took place on June 29, 1949, and the claim for payment of the guaranty was filed on July 8, 1949 (R. 14). Thus this case is directly governed by (b)—*i.e.*, it involves a sale of the security "subsequent to the date of computation, and prior to the submission of the claim." In such a case, (b) provides that:

> Credits accruing from the proceeds of [the] sale or other disposition of the security * * * shall be reported to the Administrator incident to [the] submission [of the claim], and the amount payable on the claim shall in no event exceed the remaining balance of the indebtness.

Under that regulation it is clear (as the court of appeals held in substance, though citing the wrong provision) that the Bank was entitled to receive payment of the full $4,000 guaranty only if its "loss" on the

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before accounting to the Administrator, and accrued interest from the date of claim to the date of sale, may be deducted by the holder from the proceeds of the sale of the security, or may be included in the accounting to the Administrator on such loan.

loan—measured by the outstanding indebtedness on July 8, 1949, less the proper "credit" for the proceeds of foreclosure—exceeded $4,000.

But while the result, at least for purposes of this case, is the same, the court of appeals' description of it as meaning that the "deficiency" is "the amount and the only amount which may be paid by the V.A. under the guaranty" (R. 21) is not entirely accurate. In the first place, the lender is always entitled to demand payment of the full guaranty at any time after default and need not wait until after foreclosure. And if the full guaranty is paid prior to sale of the security, the lender, although required thereafter to account to the V.A. for the proceeds of foreclosure (under (c) above), does so essentially on a theory of subrogation—*i.e.*, accounting as a "trustee" to the V.A. as the subrogee of the lender's rights to the security—and not on a theory of repaying a part of the "guaranty" as such. That is also essentially the theory of the accounting even when the claim is not submitted until after foreclosure. Under (b), the "claim" is still for the full guaranty and the proceeds of foreclosure are simply to be "reported" to the V.A. "incident to" the submission of the claim. The limitation on the amount actually to be paid the lender to the remaining indebtedness is, conceptually, not the result of reducing the amount of the "guaranty" to which the lender is entitled but rather the result of setting off against each other the lender's right to the guaranty and the V.A.'s rights of subrogation. The absolute nature of the guaranty and of the lender's right to its payment is not changed by the fact that

the claim is postponed until after foreclosure. The rights—the lender's rights, which arose upon default, to payment of the full guaranty, and the V.A.'s rights as subrogee to the extent of the guaranty—remain the same, but they are settled in a single accounting, so that only the net balance due the lender need be paid.

For purposes of this case, however, it is sufficient to say that the V.A. was liable to pay the Bank no more than the amount of the indebtedness remaining after the "Credits accruing from the proceeds of [the] sale or other disposition of the security." That does not differ in substance from the holding of the court of appeals, and the real question in dispute is how those "credits" are to be determined.

c. Determination of the amount of the "credits" arising from sale of the security.—To determine the amount of the "credits" to be made against the indebtedness due the lender upon sale of the security, the court of appeals turned to state law, and held that under the Pennsylvania Deficiency Judgment Act (Appendix C, pp. 75–76, *infra*) the Bank, as a purchasing mortgagee, was required to give credit for the full amount of the remaining indebtedness unless it filed a petition in a state court within six months of the sale to have the "fair market value" of the property determined (in which event it would be required to give credit for that "fair market value"). Since the Bank did not file such a petition within six months, the credit it was required to give at the date of sale (the full debt) was never reduced and hence, in the court's view, there was no unsatisfied indebtedness either at

the date of the claim or thereafter which the V.A. could be required to pay on the guaranty.

The court turned to state law, it seems evident from its opinion, only because of its belief that neither the Act nor the regulations provided expressly for the "credits" to be made on account of the sale of the security.[18] While we would question the result even on that assumption, the complete answer is that the regulations *do* expressly provide for the "credits" to be made. Those provisions are found in § 36.4320 of the regulations, which set forth in precise detail the amounts "which shall be credited to the indebtedness of the borrower on account of the value of the security" upon its disposition under each of the various kinds of loans and foreclosure procedures.

The regulations providing for the credits to be made on disposition of the security are detailed and complex and are set forth in Appendix B (§ 36.4320, *infra*, pp. 68–72). Those directly governing the sale in this case provide:[19]

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[18] *E.g.*, "We further agree that the terms of that guaranty are governed by the Servicemen's Readjustment Act * * * and the regulations" (R. 20); "An examination of the Act fails to disclose any attempt on the part of Congress to supplant state law for determining the amount of the deficiency * * *. The regulations * * * make it equally clear * * * that state law was intended to be followed in determining the amount of the indebtedness to which the guaranty related" (R. 21); "* * * we are convinced that federal law requires a referral to the state law in this instance" (R. 22).

[19] § 36.4320 is the only relevant provision of the regulations that was significantly altered between the date of the loan (January 12, 1948) and the date of the foreclosure and accounting proceedings (May 12–July 8, 1949). We have set it forth here and in the body of the Appendix as it was in effect at foreclosure (*i.e.*, as revised by 13 F.R. 7739–7741, December 15,

§ 36.4320 *Sale of security.* (a) Upon receipt by the Administrator of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed or insured loan, he may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of subparagraphs (1), (2), (3) and (4) of this paragraph:

(1) If a minimum amount for credit to the indebtedness has been specified in relation to a sale of real property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall credit to the indebtedness the amount so specified. The holder thereupon may retain the property or not later than 15 days after the date of sale advise the Administrator of his election to convey or transfer

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1948). We have also, however, set it forth in the margin in the Appendix (pp. 68–70, *infra*) as it stood on the date of the loan. From a comparison of the two versions, it may be seen that, although the section was rewritten to spell out in more detail the procedure to be followed in a greater variety of circumstances, there was no change of substance that would affect the result in this case (compare (b)(2) of the original section with (a)(1) and (4) of the revised section). Since the change affected no substantial rights, the regulation in effect on the date of the foreclosure proceedings governed those proceedings by force of § 36.4300, which makes the regulations applicable when published "to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired." Thus, although the result would be the same under either version, it is the revised § 36.4320 that is technically controlling, and we have accordingly stated the discussion in this brief in the language of that, rather than the earlier, provision.

> the property, or the rights thereto derived through the sale, to the Administrator.
>
> * * * * *
>
> (4) If a minimum amount has not been specified by the Administrator under subparagraph (1) or (2) of this paragraph, the holder shall credit against the indebtedness the net proceeds of the sale * * *.
>
> * * * * *
>
> (g) In the event a holder elects to convey or transfer the property to the Administrator pursuant to paragraph (a) (b) or (c) of this section, the consideration to be paid by the Administrator in return for the property shall be the specified amount: * * *.

By their express terms, therefore, the regulations direct that if, as here, "a minimum amount has not been specified by the Administrator" the lender need credit against the indebtedness only the actual proceeds of the sale (§ 36.4320(a)(4)).

The key to the regulations is to be found in the "specified minimum amount" provisions and in the purpose for which the prescribed credits are to be used. The "specified minimum amount" operates, essentially, as an "upset price": it is the price at which the lender is directed (if necessary) to buy in the property and at which, in turn, it is entitled (unless it chooses to keep the property itself for that credit) to resell it to the V.A. If, as is usually the case when an upset price is established, the lender elects to convey the property to the V.A., the V.A. must then dispose of the property on its own account. The V.A., of course, has no interest in trading in real estate

on its own account as such, and hence it has no reason to establish an upset price unless to do so will result in reducing its net liability under the guaranty (*i.e.*, in the final accounting under § 36.4321 (b) and (c), discussed above). Since, in turn, the only credit against the indebtedness that will reduce that liability is one that exceeds the unguaranteed portion of the debt, it follows that there is no purpose in establishing an upset price unless it is one that exceeds that amount. Accordingly, the V.A. establishes an upset price only if, on its appraisal, the property has a realizable value in excess of the unguaranteed portion of the debt.[20] If its realizable value is less than that, it does not set an upset price and requires the lender to give credit only for the actual proceeds. Not being willing itself to underwrite (by an offer to buy) a valuation greater than the unguaranteed portion of the debt, the V.A. can hardly require the bank to give credit for more than that amount (unless, of course, the property is actually sold on foreclosure for more), and how *much* less than that the actual proceeds turn out to be is of no concern to the V.A., since its net liability will still be for the full guaranty.[21]

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[20] Veterans' Administration Manual M4A-8, Part IV, ¶ 2.16, provides:

> In all cases involving guaranteed loans, the amount specified will be an amount equal to the appraised value of the property as determined by the latest appraisal or a sum not exceeding the total debt plus foreclosure expenses, whichever is less, except where the amount due the holder after crediting the amount paid or payable under the guaranty exceeds such appraised value, in which case no amount will be specified.

[21] In this case, with an indebtedness exceeding $13,000 and a guaranty of $4,000, the V.A. would be liable for the full

From the point of view of the lenders, the fact that they are required, upon foreclosure, to give credit only for the actual proceeds, unless an upset price is established, is the heart of the protection afforded them by the guaranty. Since they are required to give credit only for amounts actually realized or immediately realizable (under the upset-price option to resell to the V.A.), they are assured of receiving the full guaranty unless they have otherwise been made whole in cash or cash equivalents. And it is precisely because, and only because, the foreclosure-accounting provisions do operate in that way that the guaranty affords, as it was intended to afford, protection fully equivalent to that provided by the usual down payment.

The provisions of § 36.4320 prescribing the credits to be made against the indebtedness for the proceeds of foreclosure, for purposes of the final accounting under § 36.4321 (b) and (c),[22] are thus the very essence of the guaranty system. It is by them that protection to lenders equivalent to a down payment is assured and it is by them (the upset-price mechanism) that protection to the V.A. against windfalls to

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guaranty so long as the credit for the proceeds of foreclosure did not substantially exceed $9,000. The V.A. was unwilling to offer (by an upset price) more than that amount for the property and, since it made no difference how much less than that was credited (whether $250 or $9,000), it had no interest in fixing an upset price below that amount. It accordingly allowed the Bank to bid in the property for a nominal price and assumed full liability on the guaranty.

[22] That is, of course, the only reason for § 36.4320 being in the regulations at all; for an express recognition of that purpose, see § 36.4320(g).

the lenders, at its expense, is assured. Contrariwise, without those express provisions and with such a crucial matter being left to state law,[23] the guaranty would, as the decision below demonstrates, be of almost negligible value (see pp. 18–21, *supra*).

The application to this case of the Act and regulations, as we have analyzed them and as they have consistently been applied by the Administrator throughout the 16 years since the adoption of the Act,[24] may be summarized as follows: The $13,000 loan by the Bank to respondent was automatically guaranteed by the V.A. to the extent of 30.76% (the ratio of the $4,000 maximum to the original loan) of the outstanding indebtedness (§ 500(a); § 36.4302(a)). The Bank was entitled to demand payment from the V.A. at any time after August 12, 1948 (three months after the default on May 12, 1948) (§ 506; § 36.4316(a)). It did not do so prior to the date of judgment of foreclosure (May 12, 1949), and hence the amount of the guaranty became fixed as 30.76% of the indebtedness outstanding on that date (which, being in excess of $13,000, fixed the guaranty at the maximum of

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[23] For an express recognition that the very purpose of § 36.4320 was to supersede state law governing the credits required to be given on foreclosure, see § 36.4320(d), providing that if the amount bid by the lender for the property is a minimum bid "required under applicable State law", no credit at all need be given for purposes of the guaranty—*i.e.*, the amount payable "under the guaranty shall not be subject to any adjustment by reason of such bid."

[24] See, *e.g.*, Decisions of the Administrator of Veterans' Affairs, No. 589 (September 25, 1944), vol. 1, p. 1039; *id.*, No. 625 (January 22, 1945), vol. 1, p. 1154.

$4,000) (§ 506 (proviso); § 36.4321(a)). Thereafter, on June 29, 1949, the Bank purchased the property at the sheriff's sale for $250. No upset price having been established by the V.A., the Bank was required to credit against the indebtedness, for purposes of the final accounting on its claim for the guaranty (filed on July 8, 1949), only the actual proceeds ($250) (§ 36.4320(a)(4)). Since, after taking into account that credit, the remaining balance of the indebtedness exceeded $4,000, the Bank was entitled to payment of the full $4,000 guaranty (§ 36.4321(b)).

C. The Regulations Are Authorized by the Act and Control Over Conflicting State Law

From the preceding examination of the regulations, it is apparent that, on the question of the credits to be made against the indebtedness upon the sale of the security, for purposes of the guaranty, the regulations are in direct conflict with Pennsylvania law as construed by the court of appeals. The regulations require credit to be given only for the actual proceeds unless the V.A. establishes an upset price. Under them, since no upset price was established, the required credit in this case was only the nominal one of $250, leaving an indebtedness in excess of $4,000, and thus entitling the Bank to payment of the full $4,000 guaranty in the final accounting under § 36.4321(b). Pennsylvania law, as construed by the court of appeals, requires a credit to be given—for purposes of determining the liability of guarantors as well as of the debtor—equal to the full amount of the indebtedness (unless, as was not done here, a lesser "fair market value" is judicially determined).

Under that view, the debt had been fully satisfied at the date the claim was filed and hence, in the court's view, the Bank was entitled to nothing on its guaranty.

Once that direct conflict is recognized, we do not believe there can be any doubt about its resolution. The court of appeals, as we have noted, turned to state law, not because it doubted the controlling force of the regulations, but only because of its belief that the regulations did *not* provide for the matter but were intended to leave it to state law. We will, however, show briefly that those provisions of the regulations are fully authorized by the statute and, therefore, are controlling over state law under the Supremacy Clause.

1. That the regulations are *consistent* with the statute has already been demonstrated in the preceding detailed examination of the statute and the regulations.[28] It seems equally clear that the foreclosure-credit provisions were "necessary and appropriate for carrying out the provisions" of the Act (§ 504), for it is evident that provisions governing the accounting for the foreclosure proceeds were essential

[28] There is perhaps one formal inconsistency, not relevant here, in the requirement of § 36.4316(a) that the default have continued for three months before a claim for the guaranty may be made, while § 506 of the Act literally authorizes claims immediately upon "default." The statute was hardly meant, however, to be applied so strictly, and there is little doubt that the powers given the Administrator to implement the Act were broad enough to allow him to define "default" to mean a *substantial* default—*i.e.*, one that has continued for three months.

to a final settlement between the lenders and the V.A. on their respective guaranty and subrogation rights. No more is required for the regulations to be fully authorized by the express terms of § 504.

Not only, however, were the foreclosure-credit provisions of the regulations (*i.e.*, § 36.4320) "necessary" in the sense that *some* rule was necessary, but the specific rule adopted by the regulations was itself essential to the purposes of the Act. We have shown above (pp. 18–20, *supra*) that the method of accounting adopted—in which the lender must account only for cash received or for cash equivalents (an upset-price valuation supported by an offer to buy) before becoming entitled to payment of the guaranty—is essential if the guaranty is to afford protection equivalent to that afforded by a down payment (*i.e.*, so that the security stands for, say, only 70% of the original purchase price, rather than 100%). And that it was the purpose of Congress to provide that degree of protection seems unquestionable.

The general objective of the Servicemen's Readjustment Act, passed (on June 22, 1944) in the closing days of World War II, was to aid returning veterans to reestablish themselves in civilian life. Title III (guaranteeing loans for the purchase of farms and business property as well as of homes) sought to achieve that end by making credit available to veterans without means to meet the usual financing requirements. The guaranty, said the House committee in reporting the bill,[26] "is intended to take

[26] S. 1767, 78th Cong. The original Senate version of the bill proposed direct loans by the government. It was the

the place of what is normally required as a down payment." H. Rep. 1418, 78th Cong., 2d Sess., pp. 3, 9.

The 1944 Act, as we have noted, was extensively revised in 1945, and it is to the revised Act that we have referred in this brief.[27] The main change that is relevant here was the addition of § 506, expressly making the guaranty payable upon default (see pp. 22–24, *supra*), a matter that had been left to implication by the original Act.[28] The history of that provi-

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House version, guaranteeing loans made by private financing institutions, that was finally adopted. H. Rep. 1624, 78th Cong., 2d Sess., p. 22 (conference report).

[27] The major change was the elimination of the requirement of the original Act that V.A. approval be obtained *prior* to the disbursement of the loan. The 1945 amendments made the guaranty "automatic," so that lenders could themselves determine the eligibility of loans under the Act and be entitled to the guaranty so long as the loans (reported to the V.A. after disbursement) in fact complied with the requirements of the Act and the regulations. While numerous other changes were also made (*e.g.*, the addition of an optional "insured" loan system and a liberalization of the amount of the guaranty and of the time within which it could be used), none of them affected the basic nature of the guaranty as established by the original Act, and the only change relevant here is that discussed in the text.

[28] The implication was supplied by the presumption that Congress intended the guaranty to have the traditional incidents of the guaranty relationship. On that basis the Administrator had construed the original Act as having the same effect as was later made express by § 506—*i.e.*, with the guaranty becoming fixed and payable immediately upon default. See 38 C.F.R. (1956 ed.) 36.4034–36.4035 (regulations applicable under the original Act, first issued in 1944, 9 F.R. 12654); see also Decisions of the Administrator of Veterans' Affairs, No. 589 (September 25, 1944), vol. 1, p. 1039.

sion reconfirms the purpose to make the guaranty "absolute" and a full substitute for a down payment.

As originally reported by the House committee and passed by the House, the 1945 revision bill (H.R. 3749, 79th Cong.) would have added a new section (there numbered § 505) providing that, when a default occurs "and after suit or foreclosure and sale the deficiency is determined," the V.A. "shall pay to the lender its guaranty not in excess of $2,000 [the former maximum] and not in excess of the deficiency." See H. Rep. 926, 79th Cong., 1st Sess., pp. 3–4, 10. One difference between that proposal and § 506 as finally adopted was, of course, that it would have made the guaranty payable only after completion of the foreclosure proceedings, rather than immediately upon default. The proposal also, however, had another (and apparently unintended) implication: since § 500(b) of the Act provided that the amount of the guaranty would decrease pro rata with reductions of the indebtedness, postponing the fixing of the guaranty until after foreclosure implied that the guaranty would be reduced to a percentage of the deficiency itself, so that it would operate only as a pro rata loss-sharing indemnity contract.[29]

At the Senate hearings, General Omar Bradley, then Administrator of the V.A., pointed out that ef-

[29] That that was not the result intended seems evident from the provision of the proposed § 505 that the lender, after foreclosure, would be paid the guaranty but "not in excess of the deficiency", for the guaranty could never be in excess of the deficiency if it were itself fixed as a percentage of the deficiency. That result nevertheless seemed the logical implication of reading § 500(b) (the pro rata reduction provision) together with the proposed § 505.

fect of the House bill and strongly opposed its adoption:

> * * * Literally, the guaranty provision [of the original Act] was intended to provide what ordinarily is required as a down payment * * *. In other words, the guaranty took the place of the purchaser's equity. It must be remembered, too, that the governmental security provided was a guaranty and not an indemnity. In other words, the Government, to the extent as to the amount guaranteed, absorbs the loss instead of sharing it with the creditor. * * *
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> While the language is not clear that what is called a guaranty is intended as an indemnity, the language of section 505 of the bill appears to spell out the fact that the loss would be shared by the creditor and the Government in the ratio of the amount of the guaranty to the amount of the loan. * * *
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> * * * If an indemnity only is intended, I do not believe lending institutions would find the loans attractive * * *.[30]

The Senate committee then reported out a revised bill which, *inter alia,* omitted § 505 of the House bill, explaining that its bill "preserved the guaranty principle of the existing act instead of the House provision, which is in effect a contract of indemnity, with

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[30] *Hearings before Subcommittee of the Senate Committee on Finance on H.R. 3749*, 79th Cong., 1st Sess., pp. 31–33. Representatives of the banking industry similarly testified that the guaranty would not, under the House bill, be an acceptable substitute for down payments (*id.* at 169–170, 349–350).

the lender and the Government sharing the loss pro rata." S. Rep. 698, 79th Cong., 1st Sess., p. 4.

In conference, neither the House bill (containing the "deficiency" procedure) nor the Senate bill (containing no provisions expressly governing the procedure on default) was adopted. The managers agreed to an entirely revised version of Title III which sought to compromise the differences. It is that version that was finally enacted and in which § 506 as it now reads (*i.e.*, with the guaranty payable immediately on default) first appeared. The separate statement of the House managers, appended to the conference report, contains the somewhat misleading comment that § 506, "relating to procedure on default, is retained substantially as in the House bill." H. Rep. 1449, 79th Cong., 1st Sess., p. 17. That, of course, is hardly a correct statement read literally, and it apparently meant only that the principle of the House bill (in expressly providing for the procedure on default) was adopted, and that the provision as rewritten—to meet the Senate objections and to remove the unintended implications of the original wording—was "substantially" what the House had intended.

While the meaning of § 506 is clear enough on its face, the history of that provision is significant, we think, in showing Congress' concern that the absolute protection afforded by the guaranty, fully equivalent to that given by a down payment, not be weakened. It was expressly on that basis that objection was made to the House provision, and it seems evident that it

was because of those objections that the provision was revised to avoid that consequence.[31]

2. The provisions of the regulations governing the accounting for the proceeds of foreclosure (specifically, § 36.4320) being expressly authorized by the Act and essential to the fulfillment of the very purpose of the federal program, they are plainly controlling over conflicting provisions of state law. *McCulloch* v. *Maryland,* 4 Wheat. 316, 427; *Testa* v. *Katt,* 330 U.S. 386. Additionally, the regulations were incorporated by reference into the guaranty contract with the Bank both by operation of law (§§ 500(b), 504; § 36.4334) and by the express terms of the Home Loan Report submitted by the Bank in requesting a loan guaranty certificate to be issued (R. 15 (bottom)). "The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties * * * all present questions of federal law not

[31] That history also shows the error of the court of appeals' reliance upon the language quoted by it from the statement of the House managers appended to the conference report: "In the event the veteran defaulted * * * and after suit on foreclosure and sale *the deficiency was determined*, then * * * the Administrator would pay to the lender its guaranty * * * not in excess of *the deficiency*" (R. 21; emphasis supplied by the court). That statement was a part of the managers' summary of what the *House bill* had provided and was an almost verbatim paraphrase of § 505 of that bill. H. Rep. 1449, *supra*, at p. 15. Not only was that provision not adopted but, as we have shown, it was not adopted for the very reason that it had the implications the court of appeals now attributes to the House managers' paraphrase of it.

controlled by the law of any State." *United States* v. *Allegheny County*, 322 U.S. 174, 183; see also *Wissner* v. *Wissner*, 338 U.S. 655; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363.

II.

RESPONDENT IS LIABLE TO INDEMNIFY THE VETERANS' ADMINISTRATION FOR ITS REQUIRED PAYMENT OF THE GUARANTY

The court of appeals agreed "that an independent indemnity relationship was created by the veteran's application for guaranty of his loan" (R. 20). Since, however, the "amount payable under the indemnity agreement * * * is limited to the amount which the V.A. under the statute is *required* to pay on its guaranty" (R. 21), the court denied recovery of indemnity because of its holding that the V.A. was not required to pay the guaranty to the Bank. Thus, the court of appeals did not disagree that respondent would be liable for indemnity if, as we have tried to show, the V.A. *was* required to pay the guaranty. We will, however, briefly demonstrate the basis for respondent's liability.

1. The Act as in force on the date of the loan contained no express mention of the veteran's indemnity obligations. That reflects, however, only the assumption, particularly evident in the original Act—which equally omitted any reference to such basic incidents as the time of payment and the right of subrogation—that the consequences of a guaranty were so well defined by the common law as to require no specification. And just as § 506 was added in 1945 expressly to

recognize the V.A.'s liability to make payment immediately upon default and its resulting rights of subrogation (see pp. 45–49, *supra*), so later changes (after the date of the loan here) have expressly recognized the existence of the veteran's indemnity liability. Thus, in 1952, in adding a provision dealing with the effect of prior guaranteed loans in determining a veteran's remaining entitlement, Congress distinguished loans on which the V.A. had incurred a liability or loss "unless * * * the resultant indebtedness of the veteran to the Government shall have been paid in full." § 500(a) (clause 2(b) of second sentence), as amended by Act of July 16, 1952, 66 Stat. 682, 38 U.S.C. (1952 ed.) 694(a). Similarly, in 1956, Congress again recognized the veteran's personal liability *to the Administrator* (*i.e.*, indemnity liability) by providing a method whereby, upon resale of the property to an approved purchaser, the veteran might be relieved "of all further liability to the Administrator on account of such loan (including liability for any loss resulting from any default of the transferee * * *)." § 506(b), as added by Act of August 1, 1956, 70 Stat. 914, 38 U.S.C. (1952 ed., Supp. V) 694g(b).

2. The regulations, of course, have from the beginning provided for the veteran's duty to indemnify the V.A. for any guaranty liability incurred. The provision in force at the time of the loan in this case, and hence incorporated by reference into the guaranty application made by respondent,[22] provided:

[22] See R. 13, 15 (bottom of page), 16. Since the veteran's entitlement to a maximum total amount of guaranties is

§ 36.4323 *Subrogation and indemnity.* * * *
(e) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of the act shall constitute a debt owing to the United States by such veteran.

The validity of that regulation—stating no more than the universal right of guarantors to indemnity [33] and simply making express a liability that Congress in later amendments (*supra*) has assumed to have been a necessary consequence of the guaranty—has never been, and cannot well be, questioned.[34]

Nor can there be any doubt that the regulation is, by its terms, fully applicable here. Respondent, by emphasizing "liabilities of [the] veteran," seems to suggest that the regulation can be read as applicable

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personal to him and may be used by him on such loans as he chooses, he must, of course, request the use of his entitlement on a particular loan even though the guaranty is otherwise "automatic". The "automatic" feature—the major change made by the 1945 revision—was intended simply to permit lenders to process loans without prior V.A. approval and then report them to the V.A. with the veteran's certificate of eligibility, on which, in turn, the amount of entitlement used is to be noted. See § 500(c); § 36.4303(a).

[33] See, *e.g.*, *Restatement of the Law of Security*, § 104; Stearns, *Law of Suretyship*, §§ 11.35, 11.37, 11.39, 11.40 (1951 ed.).

[34] See, *e.g.*, *McKnight* v. *United States*, 259 F. 2d 540 (C.A. 9); *United States* v. *Gallardo*, 154 F. Supp. 373 (N.D. Cal.); *United States* v. *Jones*, 155 F. Supp. 52 (M.D. Ga.); *United States* v. *Henderson*, 121 F. Supp. 343 (S.D. Iowa), in all of which (as in numerous district court judgments entered without opinions) the veteran was held liable for indemnity. The V.A. has processed a very large number of claims against veterans in circumstances comparable to those involved here. Many of these claims have been collected from other monies due the veteran, and many suits have also been brought.

only to amounts paid by the V.A. in discharge of the *then-existing* liabilities of the veteran to the lender; that at the time of payment of the guaranty in this case (*i.e.*, after the Bank's purchase of the property at the sheriff's sale) the respondent's independent liabilities to the Bank had been released by operation of Pennsylvania law; and hence, even if the V.A. was still obligated by its guaranty contract to pay the Bank, it did not do so in discharge of *respondent's* liabilities, and respondent is therefore not liable for indemnity under § 36.4323(e) (see Br. in Opp. 5). That argument, if it was in fact intended to be made by respondent,[35] is plainly unsound. The regulation requires that amounts paid by the V.A. *"on account of the liabilities* of any veteran *guaranteed"* under the Act be repaid by "such veteran." The "liabilities," not the veteran, are "guaranteed," and a duty of indemnity arises for all amounts paid "on account of" any liabilities *guaranteed*—in short, any amounts paid on account of a guaranty.[36] The references to the

[35] We doubt, however, that that is what respondent meant, for he seems to have viewed the V.A.'s liability to the Bank as being dependent upon the respondent's liability, so that the two questions were not separated. A similar ambiguity arises from the district court's emphasis on the "liabilities" of the veteran (R. 11).

[36] That meaning of the regulation is confirmed by its history. The regulations issued in 1944 under the original Act (9 F.R. 12655, 38 C.F.R. (1956 ed.) 36.4043) provided:

> § 36.4043 * * *. (a) Any amounts paid to the creditor by the Administrator pursuant to the guaranty shall constitute a debt due to the United States by the veteran on whose application the guaranty was made * * *.

The change of the regulation to its present form was occasioned by the addition to the Act, in the 1945 revision, of an alterna-

"veteran" are only to identify the original obligor and hence indemnitor, and it is essentially immaterial whether the payment, made "on account of" the liabilities originally guaranteed on the veteran's behalf, is also made "in discharge of" a liability of the veteran that persisted to the date of payment. Any other interpretation would unreasonably attribute to the regulations a purpose to depart from the ordinary consequences of the "guaranty" relationship as that term is universally understood and as it was presumably used by Congress. So construed, indeed, the regulation would be of doubtful validity, for the evident purpose of Congress was only to improve the *credit* of veterans by standing behind their undertakings, and not to authorize the V.A. to relieve veterans of their liabilities either to the lender or to it as the guarantor.

That interpretation of the regulation would in any event avail the respondent nothing, for the V.A.'s liability to pay the guaranty to the Bank in fact became fixed at a time when respondent himself remained fully liable to the Bank. As we have shown in Point I, the liability to pay the guaranty arose upon default and became finally fixed (since no prior claim was made) on the date of the judgment of foreclosure, May 12, 1949 (*i.e.*, the "date of computation" under § 36.4321(a)). It was not until the Bank purchased the property at the sheriff's sale on June 29, 1949

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tive system of insuring loans, which made it necessary to reword the indemnity regulation to cover losses incurred on "liabilities * * * guaranteed *or insured*" under the Act. There was plainly no purpose to change the nature or scope of the indemnity obligation.

(R. 14), that respondent was released by Pennsylvania law from his liability to the Bank (see note 15, pp. 29–30, *supra*). Thus, the V.A.'s liability to pay the guaranty became fixed and certain at a time when respondent *was* legally obligated to the Bank, and it is surely of no consequence that the actual transfer of funds did not occur until later.

3. Turning from the express terms of the regulations to the broader considerations of policy, we think there is equally no merit in the court of appeals' conclusion "that Congress never intended to deprive veteran-mortgagors of the benefits of Acts such as the Pennsylvania one that is clearly ameliorative. Certainly there was no intention to put these individuals in a worse position than nonveteran-mortgagors" (R. 25).

In the first place, the Pennsylvania law purports only to relieve debtors and guarantors of their respective obligations *to the lender* and in no way affects the independent obligations of the debtor and the guarantor to each other (see §§ 6, 7, 9). By operation of Pennsylvania law, respondent was admittedly relieved of his liabilities to the Bank, and our position in no way deprives him of that benefit. The only remaining question is whether Congress "intended" to deprive *the V.A.* as guarantor of the benefit of the Pennsylvania law in purporting to release *it* from liability to the Bank, for it is only through releasing the guarantor from its liability to the lender that the Pennsylvania law has any effect upon the debtor's (the veteran's) resulting liabilities to the guarantor (the V.A.). Thus to frame the question as one of

depriving veterans of "benefits" under state law is to confuse the issue, for the very "benefit" intended by Congress to be conferred upon veterans—enabling them to obtain loans without down payments—depends, as we have shown, upon the V.A.'s liability on the guaranty *not* being released by operation of state law."

Secondly, it is not true that our interpretation places veterans "in a worse position than nonveteran-mortgagors" (R. 25). A nonveteran borrower could not have obtained the loan in the first place without a down payment more or less equivalent to the amount of the guaranty ($4,000), and nothing in the Pennsylvania law would enable him, upon foreclosure and sale, to recover that down payment or to require the lender to credit him with the "fair market value" of the property. The lender would

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[37] It equally begs the question to assert, as does respondent, that "Congress never intended that a lender * * * should reap the benefit of receiving $14,500 on a loan of $13,000 while at the same time, the United States proceeds against the veteran for an indemnity for the $4,000 guaranty payment" (Br. in Opp. 7). The $14,500 proceeds were the result simply of the Bank's having been successful in reselling the property, on its own account, for $10,500 (R. 14), and under no possible interpretation either of federal or state law is the lender accountable for the profit or loss realized by it on resale. The question is solely that of the credits to be made for the proceeds of the *sheriff's sale*, and whatever those credits may be (actual proceeds, upset price, or a judicially-determined "fair market value"), the purchasing mortgagee (or, for that matter, any other purchaser) will inevitably realize either a profit or loss on resale.

In reply to respondent's implied assertions that the Bank realized a windfall on resale of the property, however, we may point out that the Bank in fact suffered a net *loss* of $337.24

be entitled to keep the property, whatever its actual value, in payment of the remaining indebtedness (*i.e.*, 70% of the original cost), and need obtain a judicial appraisal, and credit that value, *only* if he seeks to obtain a deficiency judgment.[38] Thus, on the facts here, a nonveteran borrower would have lost both his $4,000 down payment and his result-

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on the loan, even after payment of the full guaranty. That result is arrived at by the following computation based upon information appearing in the V.A.'s files:

Judgment entered on May 12, 1949 (including attorney's fees allowable under bond and mortgage)		$14,103.47	
Interest to date of sheriff's sale (June 29, 1949)		77.60	
Costs of sheriff's sale		144.09	
Total charges			$14,325.16
Proceeds of resale	$10,500.00		
Plus apportionment of real estate taxes	24.97		
Less: broker's commission	(525.00)		
revenue stamps	(11.55)		
acknowledgment of deed	(0.50)		
Net proceeds of resale		$9,987.92	
Payment of guaranty		4,000.00	
Total proceeds			13,987.92
Bank's net loss on loan			(337.24)

While those figures (being ultimately irrelevant) do not appear in the record in this case, the Court can take judicial notice of the judgment (entered on May 12, 1949, Court of Common Pleas of Montgomery County, Pennsylvania, No. 351, April Term, 1949), and the other amounts are in evident conformity with standard charges (*e.g.*, the 5% broker's commission).

[38] Moreover, even if the lender petitions to have the "fair market value" determined, that value can never exceed the net indebtedness (see § 6). The function of the appraisal is only to fix the amount of the *deficiency*, if any, still collectible from the debtor, not to establish a *surplus* repayable to the debtor.

ing equity in the property. Respondent is ultimately in no different position. The guaranty operates, as we have stressed throughout this brief, essentially as a deferred down payment. Because the credit of the United States stood behind him to the extent of $4,000, respondent did not have to put up that (or a roughly equivalent) amount to begin with, and he can hardly complain that because he, unlike the nonveteran borrower, is able to defer his payment of that amount he is in a worse position when, having defaulted and allowed the property to be sold for less than 70% of its original cost, he has to pay the same amount that the nonveteran would already have paid and lost.[39]

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[39] In an important respect, indeed, the veteran is considerably better off than his nonveteran counterpart. In addition to being able to defer his "down payment", the *amount* of the "down payment" that he risks losing upon default is, because of the pro rata reduction feature of the guaranty, constantly diminished as he pays off the loan. Thus, if a nonveteran, having made a $4,000 down payment and monthly payments reducing the principal (*i.e.*, of the $9,000 loan) by $3,000, defaulted and allowed the property to be bid in for less than $6,000, he would lose his total investment of $7,000. The veteran with an original $4,000 guaranty, on the other hand, would lose only his $3,000 in monthly payments plus $3,076 he would have to pay the VA as indemnity (the 30.76% guaranty of the original $13,000 loan applied to the reduced indebtedness of $10,000)—that is, he would be out only $6,076 rather than the $7,000 loss of his nonveteran counterpart.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.
WILLIAM H. ORRICK, JR.,
Assistant Attorney General.
WAYNE G. BARNETT,
Assistant to the Solicitor General.
ALAN S. ROSENTHAL,
ANTHONY L. MONDELLO,
Attorneys.

PINCKNEY G. MCELWEE,
DAVID C. BYRD,
Attorneys, Veterans Administration.

MARCH 1961.

APPENDIX A

SERVICEMEN'S READJUSTMENT ACT OF 1944

The Act of December 28, 1945, 59 Stat. 623, 626–631, revised Title III of the Servicemen's Readjustment Act of 1944, 58 Stat. 291, to read in relevant part as follows:*

TITLE III—LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES, FARMS, AND BUSINESS PROPERTY

CHAPTER V—GENERAL PROVISIONS FOR LOANS

SEC. 500. (a) Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war * * * shall be eligible for the benefits of this title. Any loan made by such veteran within ten years after the termination of the war for any of the purposes, and in compliance with the provisions, specified in this title, is automatically guaranteed by the Government by this title in an amount not exceeding fifty per centum of the loan: *Provided*, That the aggregate amount guaranteed shall not exceed $2,000 in the case of non-real-estate loans, nor $4,000 in the case of

*None of the provisions set forth were amended prior to the date of the loan in this case (January 12, 1948). With subsequent amendments having no material effect on the questions involved in this case, Title III of the Act may be found as 38 U.S.C. (1952 ed.) 694–694n. The Title was substantially rewritten by the Act of September 2, 1958, 72 Stat. 1203, and codified as 38 U.S.C. 1801–1824, and so appears in the 1958 edition of the Code.

585758—61——5

real-estate loans; or a prorated portion thereof on loans of both types or combination thereof.

(b) Loans guaranteed under this title shall be payable under such terms and conditions as may be agreed upon by the parties thereto, subject to the conditions and limitations of this title and the regulations issued pursuant to section 504: *Provided*, That the liability under the guaranty within the limitations of this title shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation: *Provided further*, * * * [interest, maturity, and security requirements omitted].

(c) An honorable discharge shall be deemed a certificate of eligibility to apply for a guaranteed loan. Any veteran who does not have a discharge certificate, or who received a discharge other than honorable, may apply to the Administrator for a certificate of eligibility. Upon making a loan as provided herein, the lender shall forthwith transmit to the Administrator a statement setting forth the full name and serial number of the veteran, amount and terms of the loan, and the legal description of the property, together with the appraisal report made by the designated appraiser. Where the loan is automatically guaranteed, the Administrator shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. He shall also endorse on the veteran's discharge, or eligibility certificate, the amount and type of guaranty used, and the amount, if any, remaining. * * *

(d) Loans guaranteed hereunder may be made by any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State or Territory, including the District of Columbia. * * *

* * * * *

PURCHASE OR CONSTRUCTION OF HOMES

SEC. 501. Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for payment of the property purchased or constructed or improved;

(2) That the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses; and that the nature and condition of the property is such as to be suitable for dwelling purposes; and

(3) That the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator.

* * * * *

REGULATIONS

SEC. 504. The Administrator is authorized to promulgate such rules and regulations not inconsistent with this title, as amended, as are necessary and appropriate for carrying out the provisions of this title, and may delegate to subordinate employees authority to issue certificates, or other evidence, of guaranty of loans guaranteed under the provisions of this title, and to exercise other administrative functions hereunder.

* * * * *

PROCEDURE ON DEFAULT

SEC. 506. In the event of default in the payment of any loan guaranteed under this title, the holder of the obligation shall notify the Administrator who shall thereupon pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed, and shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty: *Provided,* That prior to suit or foreclosure the holder of the obligation shall notify the Administrator of the default, and within thirty days thereafter the Administrator may, at his option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security: *Provided further,* That (1) nothing herein shall be construed to preclude any forbearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Administrator; and (2) the Administrator may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

* * * * *

APPENDIX B

VETERANS' ADMINISTRATION REGULATIONS

The regulations under Title III of the Servicemen's Readjustment Act as revised by the Act of December 28, 1945, 59 Stat. 623, 626–631, are §§ 36.4300–36.4375 of the Veterans' Administration Regulations.* They were first published on March 1, 1946 (11 F.R. 2118–2126), and the provisions relevant here were amended in part on September 4, 1946 (11 F.R. 9700–9701) and December 12, 1947 (12 F.R. 8342–8346). It is in that form that they stood on the date of the loan in this case (January 12, 1948).

The regulations were republished in their entirety, with some minor amendments, on November 27, 1948 (13 F.R. 7273–7282), and were then amended in part on December 15, 1948 (13 F.R. 7739–7742). It is in that form that they stood at the date of the foreclosure and accounting proceedings in this case (May 12–July 8, 1949) and in which they appear in the 1949 edition of the Code of Federal Regulations (38 C.F.R. 36.4300–36.4375) and, with some further relatively minor amendments, in the 1956 edition.

The 1948 republication and subsequent amendments did not significantly affect the provisions of the regulations pertinent to this case, which remained substantially the same on all relevant dates and in both the 1949 and the 1956 editions of the C.F.R. For precision, however, we will set forth the regulations

* The seemingly overlapping provisions of the 36.4000–36.4200 series of the regulations relate exclusively to loans guaranteed under the 1944 Act before it was revised in 1945.

(with one exception to be noted) as they stood on the date of the loan (January 12, 1948). Unless otherwise noted, no amendments occurred between that date and the date of the foreclosure and accounting proceedings (May 12–July 8, 1949).

PART 36—REGULATIONS UNDER SERVICEMEN'S READJUSTMENT ACT OF 1944, PUBLIC LAW 346, 78TH CONGRESS [58 STAT. 284], AS AMENDED BY PUBLIC LAW 268, 79TH CONGRESS [59 STAT. 626] [11 F.R. 2118, MAR. 1, 1946.]

GUARANTY OR INSURANCE OF LOANS TO VETERANS

§ 36.4300 [12 F.R. 8342, Dec. 12, 1947] *Applicability.* The regulations in this part and amendments thereto shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication thereof in the FEDERAL REGISTER, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired.

§ 36.4301 [11 F.R. 2118–2119, Mar. 1, 1946] *Definitions.* * * * (q) "Guaranty"—the obligation of the United States, assumed by virtue of Title III of the act, to repay a specified percentage of a loan upon the default of the primary debtor.

* * * * *

§ 36.4302 [11 F.R. 2119, Mar. 1, 1946] *Computation of guaranties or insurance credits.* (a) The sum of all guaranties * * * covering loans made to an individual veteran shall not exceed $2,000 for non-real estate loans, nor $4,000 for real estate loans * * *

(b) * * * not more than 50% of the original principal amount of any loan may be guaranteed. * * *

* * * * *

(f) A guaranty is reduced or increased pro rata with any reduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the

indebtedness corresponding to that of the original guaranty.

* * * * * *

§ 36.4303 [11 F.R. 2119–2120, Mar. 1, 1946] * *Evidence of automatic guaranties; insurance advices.* (a) Evidence of automatic guaranty will be issued by the Administrator by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. * * * No evidence of a guaranty or insurance will be issued on any transaction unless the lender, the veteran and the loan are shown to be eligible. An automatic guaranty must be based upon the original discharge certificate, or a certificate of eligibility issued by the Administrator, and in the event of conflicting loans, or of several loans to the same veteran, the available guaranty or insurance reserve shall be applied to the loans in the order they are reported to the Veterans' Administration.

* * * * * *

(c) [11 F.R. 9701, Sep. 4, 1946] Evidence of automatic guaranty or of insurance will be issuable if the loan is reported to the Administrator within 30 days following full disbursement, and upon the certification of the lender that:

(1) The loan has been made in full accordance with the terms and provisions of the Act,

* * * * * *

§ 36.4316 [11 F.R. 2122, Mar. 1, 1946] *Continued default.* (a) In the event any failure of the debtor to discharge his obligations under the loan continues for a period of three months, or for more than one month on an extended loar or on a term loan, the holder may at his option, then or thereafter, submit a claim for payment of the guaranty. He may also

*§ 36.4303 was revised in minor respects and reorganized—with subsections (a) and (c) becoming, respectively, (f) and (a)—on November 27, 1948 (13 F.R. 7274), and so appears in the 1949 and, with some further amendments, 1956 editions of the C.F.R.

then or thereafter give the notice prescribed in § 36.4317.

* * * * *

§ 36.4317 [12 F.R. 8344, Dec. 12, 1947] (*See also § 36.4319*) *Notice of intention to foreclose.* Except upon the express waiver of the Administrator, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Administrator of a notice of intention to take such action: * * *

* * * * *

§ 36.4319 [12 F.R. 8344, Dec. 12, 1947] *Legal proceedings.* * * * (b) A copy of a notice of sale under power by a holder or one acting at his behest (e.g. trustee or public official) shall be similarly delivered to the Administrator at or before the date of first publication, posting, or other notice, but in any event * * * not less than 10 days prior to date of sale. * * *

* * * * *

§ 36.4320 [13 F.R. 7739–7741, Dec. 15, 1948*] *Sale of security.* (a) Upon receipt by the Administrator

* § 36.4320 was revised between the date of the loan (January 12, 1948) and the date of the foreclosure and accounting proceedings (May 12–July 8, 1949). It is set forth above as it stood on the date of the foreclosure proceedings (see note 19, pp. 36–37, *supra*). As it stood on the date of the loan, § 36.4320 read as follows:

> § 36.4320 [11 F.R. 2122–2123, Mar. 1, 1946] *Sale of security.* (a) If any security for a guaranteed or insured loan is to be disposed of through a private sale, the amount to be realized therefrom shall be reported in the notice required under § 36.4317, or by subsequent written advice at least 10 days in advance of the sale, and the Administrator may thereupon either assent to such sale, or upon agreement to indemnify the holder to the extent of any increased or resultant loss consequent thereon, may establish an upset price which shall govern in adjusting the rights and liabilities of the holder and the Administrator.
>
> (b) Upon receipt of notice of a public sale to liquidate any security for a guaranteed or insured loan the Administrator

of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed or insured loan, he may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of subparagraphs (1), (2), (3) and (4) of this paragraph:

(1) If a minimum amount for credit to the indebtedness has been specified in relation to a sale of real property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall credit to the indebtedness the amount so specified. The holder thereupon may retain the property or not later than 15 days after the date of sale advise the Administrator of his election to convey or transfer the property, or the rights thereto derived through the sale, to the Administrator.

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may appraise such security and notify the holder in advance of the sale of the amount required to be credited to the indebtedness on account of the sale thereof, subject to the following alternatives:

(1) If a third party acquires the security at the sale the holder shall credit against the indebtedness the net proceeds of the sale, or the amount specified by the Administrator, whichever is the greater.

(2) If the holder acquires the security at the sale he shall credit the indebtedness for the purpose of accounting to the Administrator, the amount specified by the Administrator, paying over to the Administrator, the excess if any by which such credit exceeds the sum required to satisfy the indebtedness and may further dispose of the security in accordance with the rights he derived through the sale, or he may within 15 days after the date of the sale advise the Administrator of his election to transfer or convey the security, or the rights therein derived through the sale, to the Administrator in return for payment of the specified amount required to be credited to the indebtedness, or the amount required to satisfy the indebtedness, whichever is the less.

(3) Upon receiving repayment in full of all payments made on the guaranty or insurance, or upon such other

(3) If a minimum amount has been specified by the Administrator and:

(i) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,

(ii) A third party is the successful bidder at the sale for an amount less than that speci-

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terms as may be agreed, the Administrator shall deliver appropriate release of all rights in the property accruing by reason of the guaranty or insurance of the loan.

(c) When a debtor proposes to transfer or convey any security or other property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition or relinquishment of the obligation or of the security the consent of the Administrator to the terms of such proposal shall be obtained in advance of such transfer or conveyance. Prior to giving such consent the Administrator shall appraise the property which is to be transferred or conveyed and shall fix the amount which the holder shall be required to allow for the value of any such property in any subsequent accounting to the Administrator for a surplus resultant after payment of a guaranty, or in computing the net loss on a loan insured under section 508. The holder shall be entitled to elect to transfer or convey the property to the Administrator upon payment by the Administrator of the stated valuation up to the amount thereof required to satisfy in full the remaining balance of the indebtedness. Such election must be exercised by the holder within 15 days after receiving the transfer or conveyance of the property or he will be deemed to have elected to retain the property and to allow the required credit.

(d) If under the applicable State law, or decree of foreclosure or order of sale a minimum acceptable bid is provided, and the maximum bid for the property fails to equal such amount at the sale or if the court refuses to confirm a foreclosure sale, the creditor may submit to the Administrator a proposal for an agreement as to value of such property for purposes of a claim for guaranty, or insurance, or for accounting to the Administrator in respect of the property pursuant to §§ 36.4321(b) and 36.4321(c). The Administrator thereupon shall proceed in the manner provided in paragraph (*e*) and fix the value of the property. The value so fixed by the Administrator shall govern as between the Administrator and the creditor if the creditor elects to proceed with further sale of such property pursuant to said decree or order. If the creditor does not so elect the rights and liabilities of all parties will remain unaffected by such submission.

fied, the holder shall credit to the indebtedness the amount specified * * *

(iii) The holder is the successful bidder at the sale for an amount in excess of the specified amount the indebtedness shall be credited with the proceeds of the sale, but the holder shall not have the option provided by subparagraph (1) of this paragraph to convey the property to the Administrator unless a bid in excess of the specified amount was made pursuant to paragraph (d) of this section.

(4) If a minimum amount has not been specified by the Administrator under subparagraph (1) or (2) of this paragraph, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d) of this section, and the provisions of subparagraph (1) of this paragraph which extend to the holder the option of conveying or transferring the property to the Administrator shall not be applicable.

(b) In the event that any real property which is security for a guaranteed or insured loan is to be acquired by a holder in a manner other than as provided in paragraph (a) or (c) of this section (e.g., by strict foreclosure or by the termination without a public sale of the purchaser's interest in a land sale contract), the holder shall notify the Administrator of the contemplated acquisition and the Administrator may specify the amount which shall be credited to the indebtedness of the borrower on account of the value of such property. If an amount is specified as aforesaid, the holder, not later than 15 days after such acquisition, may advise the Administrator of his election to convey or transfer the property to the Administrator. If an amount is not specified as aforesaid, the holder shall not have the right to such election and the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reason of any future disposition of the property by the holder. * * *

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the

Administrator to the terms of such proposal shall be obtained in advance of such conveyance or transfer. In consenting thereto the Administrator may specify the amount which the holder shall be required to allow for the property in any subsequent accounting to the Administrator. In the event that the Administrator specifies an amount as aforesaid, the holder, not later than 15 days after such conveyance or transfer may advise the Administrator of his election to convey or transfer the property to the Administrator.

(d) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Administrator and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this section and for the purpose of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reason of such bid.

* * * * *

(g) In the event a holder elects to convey or transfer the property to the Administrator pursuant to paragraph (a), (b) or (c) of this section, the consideration to be paid by the Administrator in return for the property shall be the specified amount: ***Provided,*** That if a claim under the guaranty was previously paid, the consideration payable for the property shall be an amount equal to the indebtedness (less the amount previously paid on the guaranty) or the specified amount, whichever is less. If no claim under the guaranty was previously paid, the holder may, pursuant to § 36:4321(b) submit a claim within the maximum guaranty liability for the difference between the specified amount and an amount equal to the indebtedness. * * *

* * * * *

§ 36.4321 [12 F.R. 8344, Dec. 12, 1947] *Computation of guaranty claims; subsequent accountings.* (a) Subject to the limitation that the total amount payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure, or (2) in nonjudicial foreclosures the date of publication of the first notice of sale, or (3) in cases in which the security is repossessed without a judgment, decree or foreclosure the date the holder reposesses the security, or (4) if no security is available or no repossession takes place, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of the claim, shall be reported to the Administrator incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. He shall forthwith pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.

(d) Any allowable expenditures or costs paid subsequent to the date of computation of the claim and before accounting to the Administrator, and accrued interest from the date of claim to the date of sale, may

be deducted by the holder from the proceeds of the sale of the security, or may be included in the accounting to the Administrator on such loan.

* * * * *

§ 36.4323 [11 F.R. 2123, Mar. 1, 1946] *Subrogation and indemnity.* (a) The Administrator shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under his contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Administrator with respect to the debtor's obligation.

* * * * *

(e) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of the act shall constitute a debt owing to the United States by such veteran.

* * * * *

§ 36.4334 [11 F.R. 2124, Mar. 1, 1946] *Incorporation by reference.* Regulations issued under the act, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder shall govern the rights, duties and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

APPENDIX C

PENNSYLVANIA DEFICIENCY JUDGMENT ACT

The Pennsylvania Deficiency Judgment Act, §§ 1–11, P.L. 400, July 16, 1941 (12 Pa. Stats. (Purdon) §§ 2621.1–2621.11) provides in part:

AN ACT to protect the debtors, obligors or guarantors of debts for which judgments are entered or may be entered, and owners of real property affected thereby, and others indirectly liable for the payment thereof, by prescribing the method of fixing the fair market value of such property sold on execution, and limiting the amount collectible thereafter on such judgments

§ 1. Whenever any real property has heretofore been or is hereafter sold, directly or indirectly, to the plaintiff in execution proceedings and the price for which such property has been sold was or is not sufficient to satisfy the amount of the judgment, interest and costs and the plaintiff seeks to collect the balance due on said judgment, interest and costs, the plaintiff or plaintiffs shall petition the court having jurisdiction to fix the fair market value of the real property sold as aforesaid. * * *

* * * * *

§ 6. At such hearings the only issue before the court shall be the fair market value of the property sold at the time of said sale * * *.

* * * * *

* * * If an answer shall be filed and testimony produced setting forth that the fair market value of the property is more than the value stated in the

petition, the court shall determine and fix the fair market value of the property which shall in no event exceed the amount of the debt, interest, costs, taxes and municipal claims.

After the hearing and the determination by the court of the fair market value of the property sold the debtor, obligor, guarantor and any other person liable directly or indirectly to the plaintiff or plaintiffs for the payment of the debt shall be released and discharged of such liability to the plaintiff to the extent of the fair market value of said property as previously agreed to by the plaintiff or plaintiffs or determined by the court, * * * and thereupon petitioner may proceed by appropriate proceedings to collect the balance of the debt.

§ 7. The plaintiff or plaintiffs shall file all petitions in accordance with section one and section two of this act not later than six months after the sale of any real property: * * * In the event no petition is filed within such period, the debtor, obligor, guarantor and any other person liable directly or indirectly to the plaintiff or plaintiffs for the payment of the debt shall be released and discharged of such liability to the plaintiff or plaintiffs.

* * * * * *

§ 9. Nothing in this act * * * shall be construed to effect a release or discharge of any person otherwise than, nor to any greater extent than as herein expressly provided.

§ 10. It shall be incompetent for any debtor, obligor or guarantor at any time, either before or after or at the time of incurring any obligation, to waive the benefits of this act or to release any obligee from compliance with the provisions thereof. Any such waiver or release shall be absolutely void, unenforceable and of no effect.

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